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Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

PART 2809 CONTRACTOR QUALIFICATIONS

SUBPART 2809.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

2809.402 Policy

Contracting activities shall:

(a) Consider debarment or suspension of a contractor when cause is shown as listed under [FAR 9.406-2](#) and [FAR 9.407-2](#). Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to reconsideration if new information or additional fact-finding so justifies.

(b) If the decision is made to initiate debarment and/or suspension of a contractor, immediately

prepare a notice in accordance with [FAR 9.406-3\(c\)](#) or [FAR 9.407-3\(c\)](#). The draft notice, along with the administrative file containing all relevant facts and analysis shall be forwarded to the PE, as the debarring and suspending official, following review by the activity's legal counsel and BPC.

(c) The PE shall:

- (1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate;
- (2) If it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension, in accordance with [FAR 9.406-3\(c\)](#) or [FAR 9.407-3\(c\)](#);
- (3) Direct additional fact-finding as necessary when material facts are in dispute.
- (4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with [FAR 9.406-3\(c\)](#) and [FAR 9.407-3\(c\)](#).

2809.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) The PE shall:

- (1) Provide GSA notification of the information set forth in [FAR 9.404\(b\)](#) within five working days after debarring or suspending a contractor or modifying or rescinding such an action.
- (2) Maintain agency-wide records of debarred or suspended contractors in accordance with [FAR 9.404](#).
- (b) Contracting activities shall provide an effective system to ensure that contracting staff consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to soliciting offers from, awarding or extending contracts to, or consenting to subcontracts with contractors on the list.

2809.405 Effect of listing.

- (a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and bureaus shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the HCA determines that there is a compelling reason for such action and the PE approves such determinations.
- (b) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the PE approves such action.
- (c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the PE approves such action.

2809.405-1 Continuation of current contracts.

(a) In accordance with [FAR 9.405-1](#), contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination, contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance.

(b) Contracting activities shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the PE approves such action.

SUBPART 2809.5 - ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

2809.503 Waiver.

The HCA may waive any general rule or procedure of [FAR 9.5](#) by determining that its application in a particular situation would not be in the Government's interest.